

980 CMR 1.00: RULES FOR THE CONDUCT OF ADJUDICATORY PROCEEDINGS

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1.01: Scope and Construction of Rules

- (1) Scope. 980 CMR 1.00 shall govern the conduct of adjudicatory proceedings before the Energy Facilities Siting Board.
- (2) Application of 980 CMR 1.00. 980 CMR 1.00 shall apply to all adjudications conducted by the Board except when a specific provision of 980 CMR indicates otherwise.
- (3) Definitions. For the purpose of 980 CMR, the following definitions shall apply unless the context or subject matter requires a different interpretation:

Applicant means a person who submits to the Board an application or petition seeking determination of a matter within the Board's jurisdiction, or who has a matter referred to the Board by the Chairman of the Department of Telecommunications and Energy pursuant to M.G.L. c. 164, § 69H.

Board means the Energy Facilities Siting Board.

Board Member means any of the nine persons set forth in 980 CMR 2.03(1) or any person named to serve as a designee under the terms of 980 CMR 2.03(3).

Chairman means the Chairman of the Energy Facilities Siting Board.

Director means the person appointed by the Chairman to direct the work of the siting division and to conduct the day-to-day business of the Board as well as to perform any other duty delegated by the Chairman.

Hand Delivery means delivery by methods other than pre-paid U.S. mail (*e.g.*, Federal Express or paid courier service). Hand delivery shall not include delivery by electronic mediums such as

facsimile or e-mail unless authorized by the Presiding Officer.

Facility means any “facility” described in M.G.L. c. 164, §69 G including:

- (a) any generating unit designed for or capable of operating at a gross capacity of 100 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities;
- (b) a new electric transmission line having a design rating of 69 kilovolts or more and which is one mile or more in length on a new transmission corridor;
- (c) a new electric transmission line having a design rating of 115 kilovolts or more which is ten miles or more in length on an existing transmission corridor except reconductoring or rebuilding of transmission lines at the same voltage;
- (d) an ancillary structure which is an integrated part of the operation of any transmission line which is a facility;
- (e) a unit, including associated buildings and structures, designed for, or capable of, the manufacture or storage of gas, except such units below a minimum threshold size as established by regulation;
- (f) a new pipeline for the transmission of gas having a normal operating pressure in excess of one hundred pounds per square inch gauge which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity; and
- (g) any new unit, including associated buildings and structures, designed for, or capable of, the refining, the storage of more than 500,000 barrels or the transshipment of oil or refined oil products and any new pipeline for the transportation of oil or refined oil products which is greater than one mile in length except restructuring, rebuilding, or relaying of existing pipelines of the same capacity.

Generating Facility means any generating unit designed for or capable of operating at a gross capacity of 100 megawatts or more, including associated buildings, ancillary structures, transmission and pipeline interconnections that are not otherwise facilities, and fuel storage facilities.

Limited Participant means any person allowed to participate in an adjudicatory proceeding pursuant to M.G.L. c. 30A, § 10, and 980 CMR 1.05(2). A limited participant is not a party.

Party means an applicant, any person allowed to intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, § 1(3), and 980 CMR 1.05(1), or any person who intervenes in an

adjudicatory proceeding by right.

Person means a natural person, partnership, corporation, association, society, authority, agency or department of the State, or any body politic or political subdivision of the State including municipal corporations.

1.02: Rules of General Applicability

- (1) Waiver of Rules. Where good cause appears, not contrary to statute, the Board and any Presiding Officer may permit deviation from any rules contained in 980 CMR.
- (2) Severability. If any provision of 980 CMR is held to be invalid, such invalidity shall not affect the provisions or the applications thereof not specifically held invalid.

1.03: General Procedures

- (1) Docket. A numbered docket shall be maintained for all adjudicatory proceedings and shall contain all documents filed in a proceeding and other relevant material.
- (2) Filing of Documents with the Board.
 - (a) Filing.
 - (i) Any document to be filed with the Board pursuant to 980 CMR 1.00 shall be hand delivered, or mailed first class, to the Energy Facilities Siting Board or to the Presiding Officer at the Energy Facilities Siting Board. The Presiding Officer may allow documents to be filed by other means.
 - (ii) A document shall be deemed to be filed on the date stamped "Received" by the Board or its agent during usual business hours. Documents received after usual business hours shall be deemed filed on the following business day.
 - (b) Filing Format.
 - (i) Printing Requirements. All documents filed for possible inclusion in the record shall be clear and legible and shall be presented in accordance with the standards established by the Presiding Officer.
 - (ii) Form. Every document filed shall contain a title which indicates the nature of the proceeding, the name of the applicant, and the docket number if available. The Director or Presiding Officer shall determine the number of copies to be filed. The Board may provide forms to be used for specific purposes by any person or party; in such cases, use of forms provided shall be mandatory.
- (3) Electronic Filing. The Presiding Officer may require documents to be filed electronically.

(4) Service to Board, Parties and Participants.

(a) Service of a document upon the Board or the Presiding Officer shall be in accordance with 980 CMR 1.03(2).

(b) Any person filing documents with the Board or Presiding Officer shall simultaneously serve a copy on all parties and limited participants required to be served in the proceeding, by hand delivery or by first class mail postage prepaid using the name(s) and address(es) stated on the service list issued by the Presiding Officer. The Presiding Officer may allow documents to be served by other means.

(c) All documents filed with the Board or the Presiding Officer shall be accompanied by a statement certifying the date and means of service and the persons to whom service was made. Failure to comply with these rules may be grounds for the Board or Presiding Officer to refuse to accept documents for filing.

(d) Documents shall be deemed served on the day of hand delivery or, if mailed, on the earlier of receipt or three days after mailing. The postmark shall be evidence of the date of mailing.

(5) Signatures. Every document filed pursuant to 980 CMR 1.03(2) or served pursuant to 980 CMR 1.03(4) shall be signed by the party making such filing or service or by his authorized representative. Such signature shall constitute certification by the signatory or his authorized representative that he has read the document, that, to the best of his knowledge, every statement contained in the document is true, and that the document is not being filed to delay the proceeding.

(6) Computation of Time. Unless otherwise specifically provided by 980 CMR 1.00 or by other applicable law, computation of any time period referred to in 980 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the Board is closed, in which case the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the office of the Board is closed shall be excluded.

(7) Extensions of Time. At the discretion of the Board or the Presiding Officer, for good cause shown, any time limit prescribed or allowed in 980 CMR may be extended. All requests for extensions of time must be made either by oral motion during a hearing or conference or by written motion. All requests for extensions of time must be made before the expiration of the original time period or before the expiration of any subsequent extension(s) granted. Provisions contained in 980 CMR 1.03(7) shall not apply to any limitation of time prescribed by statute, unless extensions are permitted by the applicable statute.

1.04: Institution of an Adjudicatory Proceeding

(1) Commencement of Proceeding. Proceedings may be initiated by a petition to construct, a

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(2) Presiding Officer

(a) A Presiding Officer shall be appointed to conduct each adjudicatory proceeding. The Presiding Officer shall have the authority to take all actions necessary to ensure a fair, orderly and efficient proceeding. Such actions may include, but are not limited to: conducting evidentiary and public comment hearings; ruling on petitions to intervene or to participate in a proceeding; establishing ground rules for a proceeding; holding procedural or other conferences; regulating the course of the hearing; prescribing the order in which evidence shall be presented; administering oaths and affirmations; examining witnesses and requiring them to produce evidence which will aid in the determination of any question of law or fact at issue; disposing of procedural requests or similar matters; hearing and ruling upon motions; issuing subpoenas; causing depositions to be taken; ruling upon offers of proof and receiving relevant material and probative evidence; fixing the time for filing briefs, motions and other documents in connection with hearing; and excluding any person from a hearing for disrespectful, disorderly, or contumacious language or conduct.

(b) A Presiding Officer may at any time withdraw from a proceeding if he deems himself disqualified. Should a Presiding Officer withdraw, another Presiding Officer

shall be appointed. Any party who becomes aware of grounds that may exist for the disqualification of a Presiding Officer must immediately file an affidavit which clearly sets forth the grounds for the disqualification.

(3) Notice of Adjudication

(a) Notice shall be given at the beginning of any adjudicatory proceeding. The Presiding Officer shall give notice or shall require the applicant to give notice of an adjudication.

(b) A notice shall set forth a summary statement of the matter to be adjudicated. The notice shall state: (1) the name and address of the applicant; (2) the address of the Board and the statement that any person desiring further information or wishing to participate in the proceeding may contact the Board; and (3) the date, time, and address of any scheduled public comment hearing.

(c) In cases where a proposed facility is the subject of the proceeding, notice shall be given by publication in at least two newspapers available in the vicinity of the proposed facility and as otherwise ordered by the Presiding Officer. In cases where a proposed facility is not the subject of the proceeding, notice by publication shall be given as ordered by the Presiding Officer. Notice shall further be given by first class mail or hand delivery to any person required by law or regulation to be so notified and to such other persons as the Presiding Officer may direct. Additional notice or publication shall be made, if required by statute or regulation, in the manner prescribed therein. Unless otherwise directed by the Board or Presiding Officer, the applicant is responsible for all costs related to the publication and distribution of notice.

(d) In cases where a proposed facility is the subject of the proceeding, the notice shall contain a deadline for the filing of petitions to intervene as a party or participate as a limited participant. This deadline shall be no less than 21 days after the initial date of publication of the notice.

(e) In cases where a proposed facility is not the subject of the proceeding, the deadline for the filing of petitions to intervene as a party or participate as a limited participant shall be as ordered by the Presiding Officer.

(4) Repository of Documents. The Presiding Officer may require an applicant to place certain documents in one or more repositories to provide for public access to these documents. A repository of documents is a public library, public office, applicant's office, or similar location where documents involved in a particular proceeding may be kept and made available to members of the public. If a repository is required, the applicant shall be responsible for placing the documents therein and making adequate arrangements for convenient public access to the documents.

(5) Public Comment Hearing. When required by statute or otherwise determined appropriate by the Presiding Officer, the Board shall hold a public comment hearing. A public comment hearing shall be conducted to afford members of the general public an opportunity to comment on that matter. A public comment hearing shall be held as soon as practicable after

the commencement of a proceeding. Comments made at a public comment hearing are not deemed to be evidence.

1.05: Intervention

(1) Parties.

(a) Any person who desires to intervene as a party in any proceeding shall file a written petition to intervene as a party. A petition to intervene as a party shall be deemed to constitute, in the alternative, a petition to participate as a limited participant under 980 CMR 1.05(2). If a petition to intervene is granted in the alternative as a petition to participate as a limited participant, the petitioner may participate as a limited participant without prejudicing any review on appeal of the denial of his petition to intervene.

(b) If a petitioner desires to intervene pursuant to M.G.L. c. 30A, § 10, the petition shall state the name and address of the petitioner, the manner in which the petitioner is substantially and specifically affected by the proceeding, the representative capacity, if any, in which the petition is brought, and how the petitioner intends to participate in the proceeding.

(c) If ten or more persons desire to intervene pursuant to M.G.L. c. 30A, § 10A, the petition shall state the names and addresses of the petitioners, the representative capacity, if any, in which the petition is brought, and the damage to the environment as defined in M.G.L. c. 214, § 7A that is or might be at issue. Intervention pursuant to M.G.L. c. 30A, § 10A shall be limited to the issue of damage to the environment and the elimination or reduction thereof in order that any decision in such proceeding shall include the disposition of such issue.

(d) The Presiding Officer shall rule on the petitions to intervene as a party and may condition any allowance of a petition on such reasonable terms as he may set.

(e) Persons who are granted leave to intervene as a party must comply with all requirements of 980 CMR 1.00 and with all directives of the Presiding Officer. In addition, parties may be required to respond to discovery by the Presiding Officer and by other parties if allowed by the Presiding Officer after motion.

(f) Generally, the rights of a person who is granted leave to intervene as a party include the right to present witnesses, the right to cross-examine witnesses, the right to file a brief, the right to file comments on the tentative decision and the appellate status as a party in interest who may be aggrieved by any final decision. In addition, persons who are granted leave to intervene as a party may be afforded an opportunity to issue discovery and to present oral comments regarding the tentative decision under such conditions as the Board may provide.

(g) Except for an individual appearing *pro se*, all parties to a proceeding shall be represented by an attorney in good standing before the Massachusetts bar, unless the Presiding Officer grants a waiver of this requirement for good cause shown. A request for a waiver shall include: (1) an affidavit stating the good cause and naming a duly authorized representative; and (2) an affidavit by the duly authorized representative

accepting the appointment and certifying that he will abide by the procedural rules set forth in 980 CMR and the Presiding Officer's directives.

(2) Participation.

(a) Any person who desires to participate as a limited participant in any proceeding shall make a written request for such status. Every request to participate as a limited participant shall describe the manner in which the petitioner is interested and his representative capacity, if any, and it shall state the contention of the petitioner and the purpose for which participation is requested.

(b) The Presiding Officer may grant leave to a person to participate as a limited participant and may condition any grant on such reasonable terms as he may set.

(c) Unless otherwise indicated, a limited participant's rights shall be limited to filing a brief and to filing comments on the tentative decision pursuant to 980 CMR 1.08(2). A limited participant may be afforded an opportunity to present oral comments regarding the tentative decision under such conditions as the Board may provide.

(d) Limited participants are not parties. Therefore, a grant of leave to participate as a limited participant in a proceeding, unless so stated, does not confer status as a party in interest who may be aggrieved by any final decision.

1.06: Conduct of Adjudication

(1) Procedural Conferences.

(a) The Presiding Officer may schedule a procedural conference, either on his own initiative or upon written request by a party.

(b) At a procedural conference the following matters may be considered:

- (i) the schedule for the proceeding;
- (ii) simplification and limitation of issues; and
- (iii) such other matters as will aid in the efficiency of the proceeding.

(c) Unless the Presiding Officer has approved a stipulation to the contrary, statements made by any person at a procedural conference shall not be evidence in the proceeding or in any subsequent proceeding.

(2) Evidentiary Record. For every adjudicatory proceeding, there shall be an evidentiary record which shall include testimony as well as exhibits properly entered into evidence.

(3) Motions.

(a) Any party may request that the Presiding Officer take any action by filing a motion which clearly states the order or action sought and the grounds therefor. Such a motion may either be made during a hearing or timely filed in writing. The Presiding Officer may require any oral motion made to be reduced to writing. A copy of all motions made in writing or reduced to writing shall be served upon all parties in accordance with 980 CMR 1.03(4).

(b) Unless the Presiding Officer directs otherwise, a party may file a written

response to a written motion with the Presiding Officer within seven days after such motion is filed. The moving party may then file a written reply within seven days after such response is filed. Additional filings will only be permitted at the discretion of the Presiding Officer.

(c) A party may request a hearing on the motion at the time the motion is filed or with a response or reply filed timely in accordance with 1.06(3)(b). It is within the Presiding Officer's discretion to determine whether a hearing on the motion is necessary.

(d) Motions, except motions seeking intervention, responses to motions and replies to motions may be filed only by parties.

(4) Evidence; Privileges.

(a) All parties shall have the right to introduce both oral and documentary evidence. All witnesses shall testify under an oath administered by the Presiding Officer and shall be subject to cross-examination.

(b) Evidence shall be submitted in accordance with the schedule established by the Presiding Officer. Generally, parties will be required to submit documentary evidence, including exhibits and written direct testimony, in advance of evidentiary hearing.

(c) The Presiding Officer shall be guided by, but need not observe, the rules of evidence observed by the Massachusetts courts.

(d) The Board shall observe the rules of privilege recognized by law.

(5) Discovery. Discovery is allowed at the discretion of the Presiding Officer.

(a) Purpose. The purpose of discovery is to facilitate the hearing process by permitting the parties and the Board to gain access to all relevant information in an efficient and timely manner. Discovery is intended to reduce hearing time, narrow the scope of issues, protect the rights of the parties, and ensure that a complete and accurate record is compiled.

(b) Rules Governing Discovery. In exercising his discretion, the Presiding Officer may be guided by the principles and the procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 *et seq.* These rules, however, shall be instructive, rather than controlling.

(c) Information Requests. After the commencement of an adjudicatory proceeding, a party may serve written information requests, as permitted by the Presiding Officer, for the purpose of discovering relevant information. A party may serve information requests only during the time specified by the Presiding Officer. The Presiding Officer may, at his discretion, serve written information requests on any party to the proceeding.

(d) Responses to Information Requests. Each information request shall be separately and fully answered under the penalties of perjury by the witness(es) who can testify during hearings regarding the content of the response, unless an objection to the information request with supporting reason is stated in lieu of a response. A response shall be served within 14 days of service of the information request, or within such other

time as the Presiding Officer may specify. Responses shall be filed in the form specified by the Presiding Officer.

(e) Motions to Compel Discovery. A party may move for an order to compel compliance with its discovery request. Unless otherwise permitted by the Presiding Officer for good cause shown, such motion shall be made no later than seven days after the deadline for responding to the request. If the Presiding Officer finds that a party has failed to comply in a reasonable manner with a legitimate discovery request without good cause, he may, after issuance of an order compelling discovery, order whatever sanctions are deemed to be appropriate, including, but not limited to, suspending proceedings until the party has complied with the order or other appropriate sanctions listed in Rule 37 of the Massachusetts Rules of Civil Procedure. These rules, however, shall be instructive, rather than controlling. A party's failure to file a motion to compel discovery in a timely manner, absent a showing of good cause, may result in a waiver of its right to compel the response.

(f) Protective Orders. Upon a request for protective treatment of documents and a showing that a protective order is necessary, the Presiding Officer may make an order to protect any such document(s). The Presiding Officer may be guided by the principles and the procedures underlying the Massachusetts Rules of Civil Procedure, Rule 26 *et seq.* These rules, however, shall be instructive, rather than controlling.

(6) Evidentiary Hearings

(a) Purpose. Evidentiary hearings will be held when required by law or at the discretion of the Presiding Officer in order to allow Board staff and parties to examine witnesses with respect to the content of their pre-filed testimony and any responses to relevant information requests.

(b) Hearing Schedule. At least seven days prior to the first day of evidentiary hearings, the Presiding Officer shall notify all parties and limited participants, and any persons whose petitions to intervene or participate are pending, of the hearing schedule. The hearing schedule shall include the times, dates, place, and nature of the hearings. There may be multiple hearing dates and times during the course of a proceeding. Hearing dates and times may change. It is the responsibility of each party and limited participant to keep abreast of all changes to the hearing schedule.

(c) Rescheduling. The Presiding Officer may grant a request to reschedule a hearing. A request for rescheduling should be made timely and in writing so as not to burden or delay the proceedings.

(d) Location. All evidentiary hearings shall be held at the Boston offices of the Board, unless a different location is designated by the Board or the Presiding Officer or a different location is required by statute.

(e) Public Access. All hearings of the Board shall be open to the public and the press to the extent required by law.

(f) Off The Record Discussions. The Presiding Officer may go off the transcribed record during the course of any hearing for consultation among the parties if the Presiding Officer deems that such consultation would facilitate the conduct of the

hearing. In the absence of a stipulation to the contrary, statements made by any person during such consultation shall not be considered as evidence in the proceeding or any subsequent proceeding.

(g) Record Requests. During the course of evidentiary hearings, the Presiding Officer or parties may ask witnesses to provide documents or written responses to questions asked at the hearing. Responses to record requests are written substitutes to oral answers where fault of memory, complexity of subject or lack of immediate access to documentation precludes a responsive answer by the witness in the hearing. Upon proper filing, responses to record requests become part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery. The ordinary time for response will be seven calendar days following the day on which the request is made. Objections to record requests shall be made at the time the request is made, and in no event later than the end of the next business day.

(h) Transcript. The Presiding Officer shall arrange for the hearing to be reported by a court reporter. The transcript shall be included in the evidentiary record of the proceeding. The Presiding Officer has discretion to order expedited preparation of transcripts as the needs of the case may warrant. Any objections regarding the accuracy of the transcripts shall be brought to the attention of the Presiding Officer. Objections not raised within 30 days after the transcript is made available to the parties shall be deemed to be waived. If the accuracy of the reporting of witness testimony is in question, the Presiding Officer may require an affidavit of the witness who gave such testimony or may require further inquiry. The cost of the transcript preparation shall be the responsibility of the applicant. The cost of copies of the transcript shall be the responsibility of the person requesting the copies.

(7) Matters for Official Notice.

(a) Official notice may be taken in such matters as might be judicially noticed by the courts of the United States or of Massachusetts. The Presiding Officer also may take notice of general, technical, or scientific facts within the Board's specialized knowledge, provided that parties are afforded an opportunity to contest the matters of which official notice is to be taken.

(b) Official notice also may be taken of any facts found in any other Board proceeding. In all circumstances where such notice is taken, the parties shall be afforded an opportunity to contest the matter of which official notice is to be taken.

(c) Any party requesting that any fact be officially noticed must supply every party with a copy of the fact they are requesting to be noticed.

1.07: Post-Hearing

(1) Briefs. The Presiding Officer may set a schedule for the filing of briefs to be submitted by parties and limited participants. The purpose of briefs is to allow parties and limited participants to provide written argument based on the evidence properly entered into the

record. Briefs also may be used to address specific briefing questions posed by the Presiding Officer. Briefs may not be used to submit new evidence.

(2) Oral Arguments. Oral argument at the close of a hearing may, upon motion, be allowed at the discretion of the Presiding Officer.

(3) Other Post Hearing Filings. No post-hearing filings other than those allowed for in 980 C.M.R. 1.07(1) may be made without the permission of the Presiding Officer.

1.08: Rendering of Decisions

(1) Form of Decisions. Every tentative and final decision shall be in writing and shall contain a statement of the reasons therefor, including a determination of issues of fact or law necessary to the decision.

(2) Tentative Decisions.

(a) A written tentative decision shall be issued on each matter adjudicated by the Board unless a quorum of the Board has heard the matter or has read the evidence.

(b) A copy of any tentative decision shall be sent to each party and limited participant in the proceeding. The Presiding Officer shall designate a comment period, extending at least seven days from the issuance of the tentative decision, during which parties and limited participants may file written comments regarding the tentative decision.

(3) Final Decisions.

(a) Every final decision of the Board in an adjudicatory proceeding shall be issued following a vote taken at a meeting of the Board conducted pursuant to 980 CMR 2.04.

(b) If a tentative decision was issued in a matter, the Board shall meet following the comment period to vote on the tentative decision. At such meeting, parties and limited participants may be afforded an opportunity to present oral comments under such conditions as the Board may provide. The Board shall render a final decision after considering the tentative decision, all timely-filed written comments and any oral comments permitted. The Board need not consider written comments received after the close of the comment period.

(c) If a quorum of the Board has heard a matter, the Board may at its discretion render a final decision without first issuing a tentative decision pursuant to 980 CMR 1.08(2).

(4) Judicial Review. By the terms of M.G.L. c. 25, § 5, as made applicable to the Board by M.G.L. c. 164, § 69P, a party may seek judicial review of a final Board decision.

1.09: Supplemental Procedures

- (1) Re-Opening Hearings. A party may, at any time before the Board renders a final decision, move that the hearing be reopened for the purpose of receiving new evidence. The motion should clearly show good cause for re-opening the hearing, state the nature and relevance of the evidence to be offered and explain why the evidence was unavailable at the time of the hearing.
- (2) Consolidation. The Presiding Officer may order proceedings involving a common question of law or fact to be consolidated for hearing or decision on any or all of the matters at issue in such proceedings.
- (3) Stipulations. At the discretion of the Presiding Officer, the parties may agree upon any fact or issue pertinent to the proceeding, either by filing a written stipulation at any point in the proceeding, or by making an oral stipulation at the hearing. In making findings, the Board need not be bound by any such stipulation.
- (4) Technical Sessions. A technical session is an off-the-record meeting during which experts may provide detailed oral or written information in order to facilitate understanding of complex technical issues. The Presiding Officer may convene a technical session if he deems that such session would facilitate the conduct of the proceeding. The Presiding Officer shall permit representatives of the applicant, parties and limited participants to attend a technical session and shall make a reasonable effort to schedule and notice the time and place of any such session to permit attendance. In the absence of a stipulation to the contrary, statements made by any person during a technical session shall not be referred to or considered as evidence in the proceeding or in any subsequent proceeding. Board members, staff and parties may ask questions during a technical session.
- (5) Subpoenas. The Presiding Officer may issue, vacate or modify subpoenas, in accordance with the provisions of M.G.L. c. 30A, § 12.
- (6) Depositions. The Presiding Officer may at his discretion allow a deposition to be taken upon a showing that the person to be deposed cannot make an appearance at the hearing without substantial hardship and that the testimony being sought is significant, not privileged and not discoverable by an alternative means. If the Presiding Officer allows the taking of a deposition, the Presiding Officer shall specify the rules and procedures that will govern said deposition.
- (7) Reconsideration. Any party may file a written motion requesting the Presiding Officer reconsider a ruling as long as the motion

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(8) Offers of Proof. Any offer of proof made in connection with an evidentiary ruling shall consist of a statement, which may be in writing, of the substance of the evidence the party making the offer contends would be adduced by such testimony. If the offer of proof consists of documentary evidence, a copy of the document shall be marked for identification and shall constitute the offer of proof.

(9) Site Visit of a Proposed Facility. The Board and staff may visit the proposed site and any alternative sites in order to facilitate an understanding of the pending matter. A site visit is for informational purposes only and shall not be considered as evidence in the proceeding.

(10) Production or View of Objects. Of his own accord, or upon the motion of a party, the Presiding Officer may order the production or view of any object which relates to the subject matter of a proceeding.

REGULATORY AUTHORITY

980 CMR 1.00: M.G.L. c.164, § 69H.

980 CMR 2.00: GENERAL INFORMATION AND CONDUCT OF BOARD BUSINESS

Section

- 2.01: Purpose and Scope
- 2.02: Purpose and Functions of the Board
- 2.03: Board Membership
- 2.04: Meetings; Voting
- 2.05: Delegation of Duties; Board Staff
- 2.06: Action by Consent
- 2.07: Advisory Rulings
- 2.08: Determination of Board Jurisdiction

2.01: Purpose and Scope

- (1) Purpose. 980 CMR 2.00 describes the Energy Facilities Siting Board and establishes rules for the conduct of business.
- (2) Scope. 980 CMR 2.00 is of general applicability and applies, whenever appropriate, to all other sections of 980 CMR.

2.02: Purpose and Functions of the Board

- (1) Purpose of the Board. The Board has been established by M.G.L. c. 164, § 69H, as amended. The Board is responsible for implementing the energy policies contained in its enabling legislation in order to provide a reliable energy supply for Massachusetts with a minimum impact on the environment at the lowest possible cost. The powers and duties of the Board are enumerated in M.G.L. c. 164, § 69H.
- (2) Primary Functions of the Board. Matters reviewed by the Siting Board include petitions for:
 - (a) electric transmission lines
 - (b) electric generating facilities
 - (c) natural gas pipelines
 - (d) natural gas storage facilities
 - (e) oil refining, storage and transportation facilities
 - (f) hydropower generation facilities
 - (g) certificates of environmental impact and public need, or public interest.

The Board also has the authority to issue civil penalties to any applicant who violates an order of the Board.

- (3) Adjudicatory proceedings. The Board reviews the following matters which shall be resolved through adjudicatory proceedings in accordance with M.G.L. c. 30A and 980 CMR

1.00: a hearing on a petition to construct a facility held pursuant to M.G.L. c. 164, §§ 69J or 69J¼; a hearing on an initial petition filed pursuant to M.G.L. c. 164, § 69K or M.G.L. c. 164, § 69K½; a hearing on an Application for a Certificate filed pursuant to M.G.L. c. 164, § 69L or M.G.L. c. 164, § 69L½; and hearings on appeal under M.G.L. c. 164, § 69H½.

(4) Mailing List. The Board shall maintain a mailing list, shall place upon the list the name and address of any person or group so requesting, and shall give to such persons and groups written notice of activities of the Board for which notice may be appropriate. Failure to give notice to any person or group on the list shall not, in itself, render any act of the Board invalid. The Board may from time to time remove from the list persons or groups no longer expressing interest in receiving notices.

2.03: Board Membership

(1) Description of the Board. The Board comprises the Chairman and two additional Commissioners of the Department of Telecommunications and Energy, the Secretary of Environmental Affairs or his designee, the Director of Economic Development or his designee, the Commissioner of Energy Resources or his designee, and three public members appointed by the Governor for terms of three years, two of whom shall be experienced in environmental and consumer matters and one who shall be experienced in matters relating to the development of energy facilities. Where a designee is permitted, the designee shall be named in accordance with 980 CMR 2.03(3).

(2) Chairman. The Chairman of the Department of Telecommunications and Energy shall serve as the Chairman of the Board. In the event of the absence, recusal, or disqualification of the Chairman, the Director of Consumer Affairs and Business Regulations shall appoint an acting chairman from the remaining members of the Board.

(3) Designees. The Secretary of Environmental Affairs, the Director of Economic Development, and the Commissioner of Energy Resources each may nominate a designee to serve in his stead as a member of the Board. Nomination shall be made by a letter addressed to the Chairman and signed by the nominating official. The nominating letter shall state whether the nomination is general or limited. The nominating official may revoke a nomination at any time by letter to the Chairman.

Once nominated, a general designee shall assume all responsibilities of the nominating official pursuant to M.G.L. c. 164, §§ 69G-69S and 980 CMR 2.00. The nominating official may temporarily suspend a general nomination by appearing personally at a Board meeting or proceeding and performing the responsibilities of a Board member.

A limited designee shall assume only those responsibilities set forth in the nominating letter. The nominating official may retain and perform or may further name another designee to perform all other responsibilities.

(4) Compensation. Any public member appointed by the Governor shall receive

compensation for his services in the amount allowable by law, and shall be reimbursed by the State for all reasonable expenses actually and necessarily incurred in the performance of his official duties.

(5) Effect of Board Actions. No action taken by the Board pursuant to 980 CMR 2.00 shall bind any member of the Board or any designee for the purposes of any responsibilities of such member or designee not solely related to the operation of the Board.

2.04: Meetings; Voting

(1) Public Meetings. All meetings of the Board shall be open to the public to the extent required by M.G.L. c. 30A, §§ 11A and 11A½. All meetings of the Board shall be open to the press to the extent required by law. The Board may establish specific policies regarding the use of video cameras and other recording devices as necessary.

(2) Notice of Public Meetings. Except in an emergency as provided by 980 CMR 2.04(3), a notice of each meeting of the Board shall be filed with the Secretary of State, and a copy thereof posted in the public office of the Executive Office for Administration and Finance, at least 24 hours, not including Saturdays, Sundays, or legal holidays, prior to the time of such meeting or session.

(3) Emergencies. The Board may conduct a public meeting or executive session without giving notice as required by 980 CMR 2.04(2), if it determines that an emergency exists and that immediate, undelayed action by the Board is imperative.

(4) Executive Sessions. The Board may in the course of a public meeting vote to go into executive session. An executive session may be held only as authorized by M.G.L. c. 30A, §§ 11A, 11A½.

(5) Records of Meetings. The Board shall maintain accurate records of its meetings, setting forth the action taken at each meeting, including executive sessions. Either a full transcript of the meeting or a summary of all matters voted shall be made available with reasonable promptness after each meeting; provided, however, that votes taken in executive session may be withheld from public disclosure for so long as their publication would defeat the lawful purposes of the executive session, but no longer.

(6) Quorum; Voting.

(a) A quorum consisting of four Board members shall be required to conduct any meeting of the Board held for the purpose of considering and voting upon an adjudicatory decision, or a proposal to adopt, amend or rescind regulations, or any other matter requiring a vote of the Board. A majority of members in attendance at a meeting shall be sufficient to dispose of any question properly before the Board during the meeting at which the question is taken up.

- (b) Each Board member or designee in attendance at a meeting shall be entitled to vote on any matter which is properly before the Siting Board at that meeting.

2.05: Delegation of Duties: Board Staff

- (1) Delegation of Duties. The Board may delegate Board-specific responsibilities other than responsibility for the final decision in any matter listed in 980 CMR 2.04(6)(a) to the Chairman or to the Board staff. The facility siting division of the Department of Telecommunications and Energy shall serve as staff to the Board.
- (2) Director. The Director shall be appointed pursuant to M.G.L. c. 25, § 12N to direct the work of the facility siting division of the Department of Telecommunications and Energy and to conduct the day-to-day business of the Board. The Board or the Chairman may delegate to the Director Board-specific responsibilities other than the responsibility for the final decision in any matter listed in 980 CMR 2.04(6)(a).
- (3) Staff. The Chairman may appoint such other persons to the facility siting division staff as may be required to assist the Board in performing its functions. Staff functions shall include, among others: conducting adjudicatory, rulemaking, or factfinding hearings for the purpose of creating a record; rendering tentative decisions; and intervening in the proceedings of other agencies. The Chairman may authorize the Director to appoint a Presiding Officer for an adjudicatory or other proceeding conducted under 980 CMR.

2.06: Action by Consent

- (1) Scope. Any decision of the Board, except the final decision in any adjudicatory proceeding, may be made by action by consent pursuant to the procedures of 980 CMR 2.06. These procedures shall be used only when the Board, in its discretion, determines that expeditious action is necessary.
- (2) Procedure. The Chairman shall prepare a document entitled "Action by Consent" which sets forth the decision proposed to be taken by the Board. The document or copies thereof shall be presented to each member of the Board for review. A member may indicate consent by affixing his signature to the document or copy. The proposed action by consent shall be deemed to have been taken when the document and copies bearing the signatures of all Board members are returned to the Chairman. A proposed action by consent shall become void if it does not receive all required signatures before the beginning of any meeting of the Board held pursuant to 980 CMR 2.04.
- (3) Notice.
- (a) Except in an emergency, a notice of each proposed "Action by Consent" shall be filed with the Secretary of State, and a copy thereof posted in the public office of the Executive Office for Administration and Finance at least 24 hours, not including

Saturdays, Sundays and legal holidays, prior to the circulation of such proposed decision to Board members for signature.

(b) The notice shall state:

- (i) that the notice is for an action proposed to be taken by unanimous written consent of the Board rather than by meeting;
- (ii) that the proposed action by consent shall become void if not signed by all Board members prior to the next meeting of the Board; and
- (iii) the full and complete text of the proposed action by consent, or, if the proposed action by consent consists of more than 200 words, a summary of its terms and a statement that the full text may be obtained at the offices of the Board.

(c) For the purpose of 980 CMR 2.06, "emergency" shall mean a situation in which immediate action without delay is deemed by the Board to be imperative.

(4) Records of Actions by Consent. The Board shall maintain accurate records of all proposed actions by consent. A record of the Board's action on a proposed action by consent shall be made available with reasonable promptness after its approval by all Board members or after it becomes void.

2.07: Advisory Rulings

Any person may at any time request, via written petition, an advisory ruling with respect to the applicability of any statute or regulation enforced or administered by the Board to any person, property or factual situation. A petition shall be signed by the applicant, shall contain the applicant's address, and shall state clearly and concisely the substance or nature of the request. The petition shall be accompanied by any supporting data, views or arguments. Upon receipt of the petition, the Board shall consider it and shall, within 60 days after the receipt of the request, notify the applicant either that the request is denied or that the Board will render an advisory ruling. In order to assist the Board in considering the request, the Director may require additional information as he deems appropriate. At any time before issuance of an advisory ruling, the Board may rescind a decision to render an advisory ruling. If the advisory ruling is rendered, a copy of the ruling shall be sent to the applicant. A complete record of every advisory ruling shall be maintained by the Board. No advisory ruling shall bind or otherwise estop the Board in any pending or future matter. There shall be no obligation to render an advisory ruling.

2.08: Determination of Board Jurisdiction

(1) An applicant may at any time petition the Board for a determination of whether construction, expansion, or other modification of a proposed electric generating unit, electric transmission line, ancillary structure, natural gas pipeline, natural gas storage facility, oil pipeline, oil refinery, oil storage facility, oil transshipment facility or other facility is subject to Board jurisdiction, is not subject to Board jurisdiction, or may qualify for a Certificate pursuant to 980

CMR 6.00.

(2) The petition shall state the name of the applicant and describe the nature of the facility for which a determination is being sought. The petition shall be accompanied by a draft legal notice for publication and such written legal argument or other information as the applicant may consider appropriate. The Board may require that the applicant provide additional information after the petition is filed.

(3) The applicant shall give notice of the petition by publishing the legal notice approved by the Presiding Officer in at least one newspaper of general circulation and as otherwise ordered by the Presiding Officer. The notice shall specify that any person may submit written legal argument or other information regarding the petition. The notice shall specify the deadline for such submissions, which shall be not less than 14 days after the initial date of publication.

(4) Within four months of the petition filing date, the Board shall issue a final decision on jurisdiction. The final decision shall address only those issues necessary to decide the extent to which a proposed facility is within Board jurisdiction, is not subject to Board jurisdiction, or may qualify for a Certificate pursuant to 980 CMR 6.00. The Board's decision shall be final.

REGULATORY AUTHORITY

980 CMR 2.00: M.G.L. c. 164, § 69H.